



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

March 26, 1996

Mr. David Bolduc
General Counsel
Texas Natural Resource Conservation Commission
P.O. Box 13087
Austin, Texas 78711-3087

OR96-0405

Dear Mr. Bolduc:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 33369.

The Texas Natural Resource Conservation Commission (the "commission") received two open records requests for any analysis, documents, studies, or memos prepared by the staff of the commission regarding four legislative bills that were under consideration by the Seventy-fourth Texas Legislature. You state that the commission has released to the requestor the complete text of three letters, with attachments, that the commission sent to the director of the Texas Legislative Budget Board. The commission has also released redacted versions of the various internal memoranda responsive to the request for information. You state that you have also withheld two documents in full. You contend that the redacted portions of the memoranda and the two full documents may be withheld from the public pursuant to sections 552.106 and 552.111 of the Government Code.

The exceptions that you raise are intended to protect "advice, opinion, and recommendation." Section 552.106 of the Government Code excepts from disclosure "[a] draft or working paper involved in the preparation of proposed legislation." Open Records Decision No. 367 (1983). Section 552.111 excepts from required public disclosure advice, opinion, or recommendation intended for use in a public agency's policy-making process. Open Records Decision No. 615 (1993). Neither of these exceptions, however, protects purely factual material. See Open Records Decision Nos. 367 (1983) (section 552.106); 615 (1993) (section 552.111).

The redacted records that you submitted to this office contain two types of information: 1) general and specific descriptions of each piece of legislation, and 2) analysis of each respective bill and its possible effect or impact on the commission's regulatory functions. The two full documents entirely withheld contain timeline guidance on contemplated actions the agency should take in response to the proposed legislation. We do not believe that the mere recitation of the contents of proposed legislation constitutes "advice, opinion, or recommendation" for the purposes of either of the exclusions that you have raised; thus, this information must be disclosed. It appears that you have already released the purely factual information contained within the responsive documents.

We now, therefore, address whether the redacted portions and the two whole documents may be withheld from public disclosure. The analyses of the bills and their effect or impact on the commission constitute "advice opinion or recommendation." Section 552.111 excepts "an interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency." In Open Records Decision No. 615 (1993), this office reexamined the predecessor to the section 552.111 exception in light of the decision in *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.--Austin 1992, no writ), and held that section 552.111 excepts only those internal communications consisting of advice, recommendations, and opinions reflecting the policymaking processes of the governmental body. The purpose of this section is "to protect from public disclosure advice and opinions *on policy matters* and to encourage frank and open discussion within the agency in connection with its decision-making processes." *Austin v. City of San Antonio*, 630 S.W.2d 391, 394 (Tex. App.--San Antonio 1982, writ ref'd n.r.e.) (emphasis added).

An agency's policymaking functions, however, do not encompass internal administrative or personnel matters; disclosure of information relating to such matters will not inhibit free discussion among agency personnel as to policy issues. Open Records Decision No. 615 (1993) at 5-6. In this instance, we conclude that the redacted portions of the documents concerning an analysis of each respective bill and its possible effect or impact on the commission's regulatory functions reflects the policymaking processes of the commission. We also conclude that the two documents entirely withheld reflect the policymaking processes of the commission. Accordingly, the commission may withhold these portions of the requested records pursuant to section 552.111.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous

determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,



Don Ballard
Assistant Attorney General
Open Records Division

JDB/ch

Ref.: ID# 33369

Enclosures: Submitted documents

cc: Ms. Louisa C. Brinsmade
Politics Editor
The Austin Chronicle
P.O. Box 49066
Austin, Texas 78765
(w/o enclosures)

Ms. Lydia Gonzalez Gromatzky
Acting Director - Legal Services Division
Texas Natural Resource Conservation Commission
P.O. Box 13087
Austin, Texas 78711-3087
(w/o enclosures)

Ms. Mary E. Kelly
Executive Director
Texas Center for Policy Studies
P.O. Box 2618
Austin, Texas 78768
(w/o enclosures)